

ROBERT C. LEFAIVRE AND FREEMAN HUNTLEY  
d/b/a  
WESTERN AGGREGATES OF MINERAL AND ROCK

IBLA 73-400

Decided October 25, 1973

Appeal from decision (W-39900) of Wyoming State Office, Bureau of Land Management, declaring a mill site null and void ab initio.

Affirmed.

Mining Claims: Mill Sites! ! Mining Claims: Lands Subject to

Where the United States does not own the mineral estate of lands described in a mill site location notice, the land is not open to location under the mining laws and a mill site is not locatable thereon.

APPEARANCES: Robert C. LeFaivre, President and General Manager of Western Aggregates of Mineral and Rock, for appellants.

OPINION BY MR. FISHMAN

Robert C. LeFaivre and Freeman Huntley, d/b/a Western Aggregates of Mineral and Rock, have appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated May 3, 1973, which declared their mill site null and void ab initio.

The land in issue is described as the N 1/2 NW 1/4 of Lot 2, sec. 16, T. 18 N., R. 107 W., 6th P.M., Sweetwater County, Wyoming. The land was conveyed from the State of Wyoming to the United States on April 15, 1950. The deed of conveyance contained a reservation of all minerals and mineral rights to the land in issue as well as the right of ingress and egress and the use of so much of the surface thereof as might be necessary to prospect for, develop and remove the reserved minerals. Subsequent to the conveyance, the land was opened to entry under the nonmineral public land laws pursuant to an order, dated October 24, 1958, 23 F.R. 8400.

In declaring the mill site null and void ab initio, the State Office decision stated:

Our records show that the minerals in the tract of land are owned by the State of Wyoming. Where the mineral estate is not owned by the United States, the land cannot be said to be open to location under the mining laws. After the non! mineral estate in the land was reconveyed to the United States by the State of Wyoming, the order opening the land to the operation of the public land laws did not open and could not have opened the land to entry under the mining laws. A mill site entry may be made only on land open to location under the mining laws.

Appellants argue that the State Office erred in declaring the mill site location null and void ab initio. In support of their argument appellants assert that the public land laws provide for the location of mill sites regardless of the mineral ownership of the lands. Appellants emphasize that a mill site must be located on nonmineral land.

It is true, as appellants contend, that a mill site may only be located on nonmineral land, except as discussed below. 30 U.S.C. § 42 (1970). The nonmineral character of the land, however, is only one of the requirements which must be demonstrated by a party who intends to locate a mill site. In addition, the land must be unappropriated, and must be open to location under the mining laws. 1 American Law of Mining, § 5.32 (1968).

In Emerald Oil Company, 48 L.D. 243, 245 (1921), the Department stated that:

[T]he operation of the mill site law is in terms limited to non! mineral land, and no law has as yet authorized a mill site entry limited to the surface rights.

This is precisely what appellants seek in the case at bar. See 30 U.S.C. §§ 524, 525 (1970); Kasey v. Molybdenum Corp. of America, 336 F.2d 560, 563 (9th Cir. 1964), modifying Emerald and recognizing that mill sites may now be located on lands valuable for leasable minerals.

Therefore, as the United States does not own the mineral estate of lands described in the mill site location notice, the land is not open to location under the mining laws, and a mill site is not locatable thereon. See Eagle Peak Copper Mining Company, 54 I.D. 251 (1933).

In view of the disposition of this appeal on a matter of law, the request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Member

We concur:

Joan B. Thompson  
Member

Edward W. Stuebing  
Member

